

EXHIBIT K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re

PETROBRAS SECURITIES LITIGATION

This Document Applies to: All Cases

Cast No. 14-cv-9662

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C O N F I D E N T I A L

VIDEOTAPED DEPOSITION OF MICHAEL USSERY

Tuesday, June 14, 2016

New York, New York

REPORTED BY:

Christina Diaz, CRR, RMR, CSR, CLR

Job Number: 12714

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2 BY MS. SZYDLO:

3 Q. Are you aware of any particular
4 instances where Petrobras communicated to the
5 public that the building of COMPERJ was only
6 being done for the greater social good of the
7 country?

8 MS. VICENS: Objection to the form.

9 A. I am not aware of that.

10 BY MS. SZYDLO:

11 Q. Directing your attention to
12 paragraph 17 of your report. Do you see that
13 you state that Petrobras is subject to audits
14 by the TCU and the CGU?

15 A. That's a summation of that
16 paragraph, but yes.

17 Q. What does audit mean in this
18 context?

19 A. Audit means in the context of just
20 any type of audit where they go in and look at
21 the accounting records.

22 Q. What kind of audit does the TCU
23 conduct?

24 A. Well, it would be -- based on my
25 understanding, I understand that there has

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2 been a TCU expert that's been engaged, so that
3 would be a fuller understanding. But my
4 understanding, as I've laid out here, the
5 types of audits would be compliance audits,
6 contract audits, et cetera, as I have laid out
7 here.

8 Q. Were there scheduled periodic
9 audits?

10 A. Well, as I've laid out here, there
11 is both scheduled -- yes.

12 Q. Did the TCU issue audit reports on
13 Petrobras?

14 A. After a period of time. When you
15 say "issue," they would issue draft audit
16 reports or draft reports of some sort that
17 would lay out the preliminary findings, and
18 eventually it would be finalized.

19 Q. Was that annually or at other
20 intervals?

21 A. My understanding is that TCU, not
22 only did -- they also did periodic, but they
23 also did surprise inspections, as laid out
24 here and specified in my report. So I am not
25 sure of the timing of when those would be

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2 issued.

3 Q. Did the TCU issue audit reports on
4 Petrobras's financial statements?

5 A. Not that I recall.

6 Q. What kind of audit does the CGU
7 conduct?

8 A. Of a similar nature. They are
9 compliance-based audits.

10 Q. Were there scheduled periodic
11 audits?

12 A. Again, I am not an expert in CGU
13 reports. But my understanding is that they
14 had a combination of both scheduled and
15 surprise.

16 Q. Did the CGU issue audit reports on
17 Petrobras?

18 A. I am aware of CGU reports that were
19 issued on Petrobras, yes.

20 Q. Do you know if they were annually or
21 at other intervals?

22 A. My understanding is -- based on my
23 recollection sitting here right now, my
24 understanding is that they issued at least
25 annually. Again, I am not an expert on CGU

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2 reports, but that was my understanding.

3 Q. What's the basis for your knowledge?

4 A. It's based on my review of the -- of
5 the -- everything that's listed on Appendix C.
6 I had some discussions as well with -- with
7 attorneys.

8 Q. You said you had discussions with
9 attorneys?

10 A. Sorry. Counsel, Cleary Gottlieb.

11 Q. And did you have any discussions
12 with any other experts in this case on these
13 points?

14 A. Any other experts with respect to
15 what point?

16 Q. About these audits, the CGU and TCU.

17 A. I did not have any additional
18 discussions with any experts on TCU or CGU.

19 Q. Prior to this litigation, did you
20 have any knowledge with respect to TCU audits?

21 A. No.

22 Q. Prior to this case, did you have any
23 experience or knowledge with respect to CGU
24 audits?

25 A. No.

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2 paragraph 87 of your report, which is on pages
3 53 through 54.

4 A. Okay.

5 Q. Paragraph 87 states:
6 "Communications with regulators were
7 summarized and incorporated into the annual
8 internal audit reports presented to the audit
9 committee."

10 Do you see that language?

11 A. Yes, ma'am.

12 Q. Do you know if the audit committee
13 was made aware of issues identified by the
14 TCU?

15 A. I recall a presentation from the
16 internal audit that laid out in a high-level
17 summarized form some of the issues that were
18 raised by the TCU.

19 Q. Apart from that presentation, do you
20 know if the audit committee was made aware of
21 issues identified by the TCU?

22 A. Off the top of my head right now, I
23 can't think of any other audit committee being
24 aware of a TCU report. It doesn't mean it
25 didn't happen, but off the top of my head, I

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2 don't -- I certainly remember the discussions
3 and presentation, an internal audit
4 presentation, to the audit committee where TCU
5 reports were discussed, as well as those open
6 issues and the status of those reports.

7 Q. Do you remember anything else about
8 that particular presentation?

9 MS. VICENS: Objection.
10 Mischaracterizes testimony.

11 A. Well, the presentation was very
12 lengthy. They said a lot of things in the
13 presentation. It included the work of the
14 internal audit, what they had done for the
15 period of time, their hours, et cetera. So I
16 recall -- there's an example that I have
17 referred to in Exhibit C.

18 BY MS. SZYDLO:

19 Q. But you said -- and correct me if I
20 am wrong -- that during that presentation,
21 issues identified by the TCU were discussed?

22 A. As I recall, yes.

23 Q. And what were those issues?

24 A. Well, there was a lengthy list of
25 the issues that were presently being discussed

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2 with the TCU with respect to their audits.

3 Q. Do you remember any of them?

4 A. Off the top of my head, no.

5 Q. Do you know if the audit committee
6 was made aware of issues identified by the
7 CGU?

8 A. It seems like that the internal
9 audit -- the same internal audit report we are
10 talking about also discussed CGU matters, if I
11 recall correctly.

12 Q. Do you remember what any of those
13 issues were?

14 A. They were laid out in some level of
15 detail in the internal audit report, if I
16 recall it correctly. But specific issues,
17 sitting here today, no.

18 Q. Do you know what the audit committee
19 did, if anything, about issues such as
20 overpricing?

21 MS. VICENS: Objection to the form.

22 A. A specific issue or just generally
23 or --

24 BY MS. SZYDLO:

25 Q. Generally.

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2 your report which is entitled "Operation Lava
3 Jato," do you see paragraph 20?

4 A. Yes, ma'am.

5 Q. Do you see the sentence that starts
6 with "Over the course of 2014?"

7 A. Yes, ma'am.

8 Q. It states, "Over the course of 2014,
9 the Brazilian federal prosecutor's office
10 focused part of its investigation on
11 irregularities involving Petrobras's
12 contractors and suppliers and it covered a
13 broad payment scheme that involved a wide
14 range of participants, including former
15 Petrobras personnel."

16 Did the TCU identify irregularities
17 involving Petrobras's contractors and
18 suppliers in the 2010 through 2014 time
19 period?

20 A. Well, I would -- define
21 irregularities.

22 Q. Plain meaning.

23 MS. VICENS: Objection. Vague.

24 A. As part of the TCU audit process
25 they would have audited as part of Fiscobras,

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2 which is some of the directives that they're
3 under. F-I-S-C-O-B-R-A-S. My understanding
4 with respect to Fiscobras and TCU would have
5 done audits on various contracting services as
6 part of their jobs and their normal duties and
7 responsibilities. And as a part of that, from
8 time to time they would have raised some
9 exceptions and presented those to the company.
10 If that's what you are referring to as
11 irregularities, they raised some questions
12 about that during the course of their audit.

13 Q. You used irregularities in the
14 sentence and I am using the same meaning. You
15 said "Over the course of 2014, the Brazilian
16 federal prosecutor's office focused part of
17 its investigation on irregularities."

18 A. In the context here as it's used, I
19 think this would be a little stronger --

20 Q. Okay.

21 A. -- than what we would use in the
22 context of what TCU would. In the context
23 here, irregularities, because it's a criminal
24 investigation, would be a little more series.

25 Q. Okay. More serious than TCU's

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2 certifications. I don't recall exactly where
3 in my report I discuss that, but I do discuss
4 their training in some level of detail. And
5 those certifications oftentimes require an
6 extensive background in various types of
7 training, various types of internal audits, et
8 cetera. But the specific detail, I do not
9 have any knowledge of.

10 BY MS. SZYDLO:

11 Q. Directing your attention to
12 paragraph 120 of your report. Your report
13 states in paragraph 120: "For each control
14 internal audit documented the control
15 description, performed test procedures,
16 evaluated the results and concluded on the
17 operating effectiveness of the control.
18 Internal audit testing procedures varied by
19 control but generally included inspection of
20 underlying transactions and documentary
21 evidence to ensure that Petrobras adhered to
22 its internal control policies."

23 Do you see that language?

24 A. Yes, ma'am.

25 Q. Have you seen any evidence that the

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2 BY MS. SZYDLO:

3 Q. Using that definition of
4 "overpayments" as you just described it, how
5 did the internal audit group respond to
6 evidence of overpayments on contracts that
7 were identified by the TCU prior to 2012?

8 MS. VICENS: Objection to the form.

9 A. Well, just a point of clarification.
10 Are we talking about TCU reports that were on
11 a preliminary basis that were issued prior to
12 2012 or given to the company prior to 2012, or
13 are we talking about the physical, as you call
14 it, overpayments that might have been made by
15 the company prior to 2012?

16 BY MS. SZYDLO:

17 Q. The reports.

18 A. The reports. Okay.

19 So with respect to that, the
20 internal audits -- first of all, just as I
21 understand the mechanism of the company is
22 that TCU would submit a preliminary report to
23 the company and ask them for a clarification
24 and ask them for -- to review or whatever.
25 Internal audit would take those reports and go

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2 through some of their exception items or
3 claimed exceptions. Oftentimes the company
4 would report back to the TCU and the TCU would
5 lower -- would agree with the company. And it
6 was a back and forth between the company and
7 back to TCU and back and forth, et cetera. It
8 takes a very long time to settle. The TCU, I
9 am not sure that they ever concluded that
10 there were overpayments per se. I didn't see
11 a final TCU report that said, yes, there had
12 been overpayments. I think that was your
13 question?

14 Q. Yes. You asked what I meant by that
15 question.

16 A. Yes.

17 Q. Now let's just look at the actual
18 overpayments. How did the internal audit
19 group respond to evidence of overpayments on
20 contracts that were identified by the TCU
21 prior to 2012?

22 MS. VICENS: Objection. Asked and
23 answered.

24 MR. FARLEY: Objection.

25 A. As I said, internal audit -- not

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2 just internal audit but the TCU reports would
3 come in to the G-A-P-R-E, GAPRE component of
4 the company. They would log those TCU
5 preliminary reports or whatever and then they
6 would disseminate those to the relevant
7 department. Oftentimes it might be internal
8 audit and then internal audit would be
9 responsible for looking into those reports to
10 make a determination.

11 As far as the procedures that they
12 went through, they had a process that they
13 went through but as far as the detailed
14 procedures and looking at it and whatever,
15 sitting here right now, I could not describe
16 that. I understand we have a TCU expert that
17 might be more well versed at that.

18 Q. So you can't testify as to any
19 targeted testing that was done by internal
20 audit in response to any findings of
21 overpayments by the TCU?

22 MS. VICENS: Objection to --

23 BY MS. SZYDLO:

24 Q. Or prior to 2012?

25 MS. VICENS: Objection to the form.

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2 MR. FARLEY: Objection.

3 A. As I mentioned before, the
4 contracting process within internal audit was
5 an area of focus. If you look at the reports
6 that was generated by internal audit, they
7 spent a lot of time looking at the bidding
8 process and procurement, et cetera.

9 Now, what generated that increased
10 focus, whether it was TCU report, maybe there
11 was a certain normal cycle, I cannot sit here
12 today and tell you exactly what triggered
13 that. It could have been a TCU report. It
14 could have been any number of factors that
15 triggered their increased focus. They were
16 spending a lot of money during this period of
17 time. So it potentially could be. So I don't
18 know what triggered it but it could have been
19 TCU reports. I can't really say one way or
20 the other.

21 Q. You can't really say what type of
22 targeted testing was done?

23 MS. VICENS: Objection to the
24 form.

25 A. Was done with respect to?

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2 BY MS. SZYDLO:

3 Q. By the internal audit group?

4 MS. VICENS: Same objection.

5 A. What I mentioned before is that
6 internal audits report that they report to the
7 audit committee. They lay out the
8 departments, where they are going to spend
9 their time, where they are going to spend
10 their audits, et cetera and those lay out the
11 targets. I have seen those and as I have
12 said, sometimes bidding and contracting seems
13 to be -- as far as man hours, number of
14 audits, it seems to be always in the top one
15 or two or third position as far as number of
16 hours devoted to that. It depends how they
17 segregated it for us.

18 BY MS. SZYDLO:

19 Q. Do you know if internal audit tested
20 to ensure that there were no overpayments in
21 connection with various suppliers?

22 A. Well, we are kind of using the word
23 "overpayment" here. I am not sure what you
24 measure that against. Internal audit was
25 compliance noted. So I think the focus of a

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2 the internal audit function.

3 BY MS. SZYDLO:

4 Q. So as you sit here today, it's fair
5 to say that you don't know if internal audit
6 looked at past bidding examples and compared
7 them to actual cost estimates specifically?

8 A. As I mentioned before, internal
9 audit has, during the relevant period, focused
10 a lot on their bidding processes, bidding
11 procedures, and of course compliance with
12 their internal policies because that's what
13 internal audit does. And that's the process
14 of an internal audit.

15 But as far as a specific test or
16 procedure that they may have done, my scope
17 was not into that level of detail.

18 Q. Is it fair to say you don't know if
19 internal audit looked at past bidding examples
20 and compared them to price lists?

21 A. Well, as I mentioned before,
22 internal audit's focus is -- and they always,
23 as far as the number of audits, if we go back
24 and look at their focus and the number of
25 hours they spent and number of audits they

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2 did, the bidding process and the contracting
3 process was always at the top one or two or
4 three positions and they spent a great deal of
5 time on it. The company had contract
6 procedures in place and one of the duties of
7 internal audit is to monitor and to test
8 compliance with company policies, not only in
9 their normal internal audit function but also
10 in their role as SOX and SOX testing.

11 So that was their process and their
12 procedures. My level of review did not get
13 down to the individual, exactly what process
14 internal audit did.

15 Q. It's fair to say you don't know if
16 internal audit looked at past bidding examples
17 and compared them to industry averages?

18 A. Well, as I mentioned before,
19 internal audit's focus every year during the
20 relevant period as demonstrated based on their
21 internal audit reports, they always focused on
22 -- in the top one or two or three positions or
23 so. The number of hours, the number of audits
24 was dedicated to their bids and their bidding
25 process and bidding procedures.

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2 As part of internal audit and as
3 part of their job and their duties and
4 responsibilities, internal audit tests for
5 compliance against the NPC, which is the
6 internal contracting policy of the company.
7 They also test compliance with controls with
8 respect to SOX and so -- but my level of scope
9 of my work did not get down to the level of a
10 specific test or an individual test that you
11 are describing.

12 Q. Is it fair to say you don't know if
13 internal audit looked for any suspicious
14 bidding pattern such as bids that were too
15 high?

16 A. Well, as I mentioned before,
17 internal audit's focus every year during the
18 relevant period, based on my review of the
19 internal audit reports that they have issued,
20 has always been in the one, two, or three top
21 level positions as far as number of hours,
22 number of audits that they do is in the
23 contract bidding process and procedures. With
24 respect to that, they test against -- because
25 it's part of what internal audit does. They

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2 does that against compliance and compliance
3 with the NPC, which is their bidding contract
4 manual. They also test compliance with
5 internal controls over financial reporting.
6 And therefore, that is a focus of the company.

7 But with respect to a very specific
8 individualized test such as the one you are
9 describing, the scope of my work did not get
10 down to that individual level.

11 Q. Is it fair to say you don't know if
12 internal audit looked for any suspicious
13 bidding patterns such as bids that were too
14 close?

15 A. As I have mentioned, internal
16 audit's focus every year during the relevant
17 period, and based on my review of the internal
18 audit reports, was that they focused on --
19 based on number of hours, number of audits
20 that proceeded, that in the top one, two or
21 three position was always contract bidding
22 procedures and processes with respect to
23 contracts.

24 Internal audit's purpose, its stated
25 purpose is to test for compliance with the

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2 audit would have identified and how you would
3 identify something quote-unquote as
4 "suspicious." But I would point out again
5 that internal audit spent a great deal of time
6 auditing, testing, reviewing, et cetera. And
7 during the relevant period, based on my review
8 of the internal audit reports and internal
9 audit presentations to the audit committee,
10 they spent a great deal of time testing and
11 reviewing the bidding processes, the bidding
12 procedures. It is part of their scope of
13 their work to test against compliance with
14 management's policies and procedures as well
15 as SOX testing controls.

16 Q. But you don't know if they performed
17 that very specific individualized test, right?

18 MS. VICENS: Objection to the form.

19 A. The scope of my work did not get
20 down to that level.

21 BY MS. SZYDLO:

22 Q. Am I correct that you don't know if
23 internal audit looked for examples where
24 contractors used multiple addendums that
25 should have been rebid?

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2 THE VIDEOGRAPHER: The time is 1:50
3 p.m. and we are going off the record.

4 (Recess)

5 THE VIDEOGRAPHER: The time is 2:33
6 p.m. We are back on the record.

7 EXAMINATION

8 BY MS. VICENS:

9 Q. Mr. Ussery, I am just going to ask
10 you a few cleanup questions.

11 Earlier today you provided testimony
12 on the ability to detect fraud under ICFR.

13 Do you recall that testimony?

14 A. I do.

15 Q. I would like to turn your attention
16 to paragraph 26 of your report.

17 Now, is it your opinion that there
18 are limitations to ICFR in that regard with
19 respect to the ability to detect fraud?

20 MS. SZYDLO: Objection.

21 A. Yes. As I lay out in paragraph 26
22 of my report, there are certain inherent
23 limitations on internal control financial
24 reporting because it can only provide
25 reasonable but not absolute assurance against

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2 errors and fraud. In particular, it can be
3 circumvented by collusion of two or more
4 people and like, for example, the corruption
5 schemes at issue in the Petrobras matter
6 involve certain Petrobras employees. And in
7 some cases all contractors -- contractors
8 bidding on contracts can collude and
9 perpetuate a fraud. They are involved in a
10 position to override, so management overrides
11 can be in effect or circumvent controls and
12 avoid detection. Those are particularly
13 difficult in an internal control environment
14 to detect.

15 Q. I would like to next turn your --
16 let me just ask you a question. So it's your
17 opinion in having reviewed the record in this
18 case that those limitations apply to
19 Petrobras?

20 A. Yes.

21 Q. Based on your expertise as well as
22 your analysis of plaintiffs' expert reports
23 and Appendix C of your report, did you
24 conclude that Petrobras leadership reasonably
25 concluded during the relevant time period that